

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 22956)
of Philip R. and Katherine C. Bradley)
to Appropriate from a Mine Tunnel in) Decision 1325
Nevada County)

DECISION APPROVING APPLICATION IN PART

Philip R. and Katherine C. Bradley having filed Application 22956 for a permit to appropriate unappropriated water; a protest having been received; the applicants and protestant having stipulated to proceedings in lieu of hearing as provided for by Title 23, California Administrative Code, Section 737; an investigation having been made by the State Water Resources Control Board pursuant to said stipulation; the Board, having considered all available information, finds as follows:

1. Application 22956 is for a permit to appropriate 0.15 cubic foot per second by direct diversion from January 1 to December 31 of each year for mining and domestic purposes from an unnamed mine tunnel tributary to Sweetland Creek thence the Yuba River in Nevada County. The point of diversion is to be located within the SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 7, T17N, R8E, MDB&M.

2. Applicants' proposed point of diversion is in a cut leading to the mine entrance. Both the cut and the mine entrance are on applicants' property.

3. Protestant has the mineral rights to the mine and has protested the application primarily on the basis that the use of mine water for domestic use would severely restrict possible future mining operations and would prevent the flow of mine water south to protestant's land.

4. Presently, no use is being made of the waters from the mine.

5. Whatever the rights of protestant in the waters of the mine, such rights are not presently being exercised. A protest is insufficient where the protestant is not beneficially using the waters covered by the application and merely desires to preserve the status quo. The anticipated future use of the mine waters by protestant is not a bar to approval of an application to appropriate such water as may be available in the meantime.

6. There is a hydraulic connection between applicants' proposed source of supply and the Sacramento River via the Yuba and Feather Rivers. In Decision D 1045 it was determined that no unappropriated water was available in the reach of the Sacramento River to which the Feather River is tributary during July and August. Therefore no unappropriated water is available during July and August to the present applicants from a tributary to the Sacramento River.

7. Except for the period cited in Paragraph 6, unappropriated water is available to supply the applicants, and, subject to suitable conditions, such water may be diverted and used in the manner proposed without causing substantial injury to any lawful user of water.

8. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 22956 should be approved in part and that a permit should be issued to the applicants subject to the limitations and conditions set forth in the order following.

The records, documents and other data relied upon in determining the matter are: Application 22956 and all relevant information on file therewith particularly the report of the field investigation made on August 15, 1968.

ORDER

IT IS HEREBY ORDERED that Application 22956 be, and it is, approved in part, and that a permit be issued to the applicants subject to vested rights and to the following limitations and conditions:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 0.15 cubic foot per second by direct diversion to be diverted from about September 1 of each year to about July 1 of the succeeding year.

2. The State Water Resources Control Board reserves jurisdiction over this permit for the purpose of conforming the season of diversion to later findings of the Board on prior applications involving water in the Sacramento River Basin and Delta. Action by the Board will be taken only after notice to interested parties and opportunity for hearing.

3. The maximum quantity herein stated may be reduced in the license if investigation warrants.

4. Actual construction work shall begin on or before June 1, 1969, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted this permit may be revoked.

5. Said construction work shall be completed on or before December 1, 1970.

6. Complete application of the water to the proposed use shall be made on or before December 1, 1971.

7. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Resources Control Board until license is issued.

8. All rights and privileges under this permit, including method of diversion, method of use and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water and to carry out legally established water quality objectives.

9. Permittee shall allow representatives of the State Water Resources Control Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit.

10. Upon a judicial determination that the place of use under this permit or a portion thereof is entitled to the use of water by riparian right, the right so determined and the right acquired under this permit shall not result in a combined right to the use of water in excess of that which could be claimed under the larger of the two rights.

11. This permit shall not be construed as conferring upon the permittee right of access to the point of diversion.

Adopted as the decision and order of the State Water Resources Control Board at a meeting duly called and held at San Diego, California.

Dated: **JAN 23 1969**

W. A. ALEXANDER
W. A. Alexander, Vice Chairman

GEORGE B. MAUL
George B. Maul, Member

NORMAN B. HUME
Norman B. Hume, Member

E. F. DIBBLE
E. F. Dibble, Member